Office Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1924~~ 1925

No. ~~623~~ 184

ENRIQUE DEL POZO Y MARCOS ET AL., APPELLANTS,

vs.

WILSON CYPRESS CO.

MOTION BY APPELLEE TO DISMISS THE APPEAL.

J. C. COOPER,
Counsel for Appellee.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

No. 678.

ENRIQUE DEL POZO Y MARCOS ET AL.

vs.

WILSON CYPRESS COMPANY, A CORPORATION.

MOTION TO DISMISS THE APPEAL.

The appellee in the above entitled cause by its solicitors and counsel of record, moves the Court to dismiss the appeal from the decree of the United States Circuit Court of Appeals from the Fifth Circuit, taken and allowed in the said above entitled cause, upon the following grounds:

1. That this Court is without jurisdiction to determine said appeal.

2, That the record, decree, rulings and decisions in said cause and the grounds thereof and reasons therefor, as stated in the decisions, present no Federal questions.

3. That the decree, decision and opinion in said cause show that the said questions involved were decided upon the Statute of Limitations under the laws of the State of Florida and the laches of appellants, and not upon any Federal question.

J. C. COOPER,
Solicitor and of Counsel for Appellee.

[Endorsed:] The Supreme Court of the United States, October Term, 1924. Case No. 678. Enrique Del Pozo y Marcos et al., appellants, v. Wilson Cypress Company, a Corporation, appellee. Motion to Dismiss the Appeal. Law offices, Cooper, Cooper & Osborne, Atlantic National Bank Building, Jacksonville, Florida.

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In the Supreme Court of the United States

OCTOBER TERM, 1925

NO. 184

ENRIQUE DEL POZO Y MARCOS, ET AL.,
Appellants,

vs.

WILSON CYPRESS COMPANY,
Appellee.

MOTION TO DISMISS THE APPEAL FOR FAILURE TO FILE OR PRINT THE RECORD, AND BRIEF IN SUPPORT OF MOTION.

J. C. COOPER, H. C. CLARK,
Counsel for Appellee.

THE DREW PRESS, JACKSONVILLE 451775

SUBJECT INDEX

Page

Motion to Dismiss and Grounds..... 2

Notice 3, 4

Official Reports of Other Opinions..... 5

Statement of Former Proceedings as to Printing Record.....5, 7

Failure of Appellants to Comply with the Order of October 13, 1924, or the Rules of Court..... 6

Number of Printed Records Required by the Rules.....7, 8

Cases in Support of Motion to Dismiss for Failure to Comply with Rules as to Printing.....8, 9

Equity Rule 75 and Cases in Reference to this Rule..... 9

INDEX TO CASES CITED

Page

Benites vs. Hampton, 123 U. S. 519; 31 L. Ed. 260..... 8

Del Pozo et al vs. Wilson Cypress Co., 299 Fed. 261..... 5

Houston vs. S. W. Bell Telephone Co., 259 U. S. 318; 66 L. Ed. 961 9

Louisville & Nashville R. R. Co. vs. United States..... 9

Newton vs. Consolidated Gas Co., 258 U. S. 165; 66 L. Ed. 538 9

Portland Company vs. United States, 15 Wall 1; 21 L. Ed. 113 8

Rio Grande Irrigation Company vs. Gildersleeve, 174 U. S. 603, 608; 43 L. Ed. 1103, 1105..... 8

Steever vs. Rickman, 109 U. S. 74, 75; 27 L. Ed. 861..... 8

United States vs. Burchard, 125 U. S. 176, 178; 31 L. Ed. 662 8

Weston vs. City of Tulsa..... 9

Wilson Cypress Co. vs. Del Pozo y Marcos, 236 U. S. 635; 59 L. Ed. 758..... 5

Wilson Cypress Co. vs. Pozo y Marcos, 202 Fed. 742; 121 C. C. A. 578 5

Winslow vs Wilcox, 105 U. S. 447, 451; 26 L. Ed. 1065, 1066... 8

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 184

ENRIQUE DEL POZO Y MARCOS, ET AL.,
Appellants,

vs.

WILSON CYPRESS COMPANY,
Appellee.

MOTION TO DISMISS THE APPEAL FOR FAILURE TO FILE OR PRINT THE RECORD.

The appellee in the above entitled cause, by its solicitors and counsel of record, as a Motion to Dismiss the Appeal in said cause, moves the Court to dismiss the appeal and the decree of the United States Circuit Court of Appeals of the 5th Circuit taken and allowed in the said above entitled cause, upon the following grounds:

1. That the appellants have failed to have taken the necessary steps for printing the record or such portions thereof as appellants were required to print under the order of the Court herein of October 13th, 1924, and as required by the rules of this Court.

2. That the Clerk of this Court has not accepted the number of printed copies of the record which have been filed by the appellants and no steps have been taken to print the record.

3. That the number of printed copies filed by appellants are not sufficient so that there may be one copy for each member of the Court or so as to furnish to appellee's counsel copies of the record.

4. That the said record in said cause has not been printed or completed as required by the rules of the Court in such cases.

5. That there are not now on file in this Court the number of printed records on the appeal in this cause required under the order of the Court herein of October 13th, 1924, and as required by the rules of this Court.

J. C. Cooper, N. C. Clark

Solicitors and Counsel for Appellee.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 184

ENRIQUE DEL POZO Y MARCOS, ET AL.,
Appellants,

vs.

WILSON CYPRESS COMPANY,
Appellee.

To the Solicitors and Counsel for Appellants:

Please take notice that appellee in the above entitled cause on the first Monday, 5th day of October, A. D. 1925, at 12 o'clock noon, or as soon thereafter as counsel can be heard, at the Supreme Court room in the city of Washington, in the District of Columbia, as a Motion to Dismiss the Appeal in said cause, will move this Honorable Court upon the record herein to dismiss the appeal taken from 5th Circuit upon the grounds stated in said motion, copy of which and memorandum brief are herewith served upon you and that the said record on said appeal has not been printed, or proceedings taken by the appellants to have same printed, or to furnish the number of copies of such

record as required by the rules of this Honorable Court, or on the order of the Court heretofore made in this cause.

J. C. COOPER, and
H. C. CLARK, *Solicitors and Counsel for Appellee.*

To Messrs. Wm. W. Dewhurst, St. Augustine, Fla.
Jos. H. Jones, Orlando, Florida.
John C. Jones, Orlando, Fla.
Solicitors and Counsel for Appellants.

I hereby accept service of the foregoing Motion and Notice for submitting same on Monday the 5th of October, A. D. 1925.

September_____, 1925.

_____

Solicitors and Counsel for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 184

ENRIQUE DEL POZO Y MARCOS, ET AL.,
Appellants,

vs.

WILSON CYPRESS COMPANY,
Appellee.

BRIEF SUPPORTING MOTION OF APPELLEE TO DISMISS FOR FAILURE TO PRINT TRANSCRIPT.

Official reports of previous opinions in this case are:

Wilson Cypress Co. vs. Pozo y Marcos (decided February 4, 1913), 202 Fed. 742; 121 C. C. A. 578.

Wilson Cypress Co. vs. Del Pozo y Marcos (decided March 15, 1915), 236 U. S. 635; 59 L. Ed. 758.

Del Pozo et al vs. Wilson Cypress Co. (decided May 31, 1924), 299 Fed. 261.

On October 6, 1924, one year ago, appellants presented motion praying that the present appeal be heard on the printed transcripts which were before this Court in a former appeal, supplemented

by printed transcripts since used before the United States Circuit Court of Appeals. The prayer of this motion specifically stipulated that "the other portions of the Transcript to be duly printed as required by the rule and as this Honorable Court shall direct." The motion also stated:

> "Appellants show that at time of the former appeal there were duly filed in this Court 30 copies of the Transcript of the Record consisting of 1038 printed pages and several blue print maps."

The journal of this Court for October 13, 1924, shows: "Motion to accept a limited number of printed copies of the record granted."

Since October 13, 1924, appellants have taken no steps to print any part of the transcript. Furthermore, it develops that the "30 copies" of the transcript printed in May, 1913, on the former appeal had long since been destroyed by the clerk in the usual course of discarding old records to make room for new cases, and that appellants have been able to supply only 5 or 6 copies of this transcript.

Appellants have made no attempt to meet the rules of this Court governing the printing of transcripts. Appellants have not furnished the clerk with nor served upon appellee a designation of any part of the record to be printed. Appellants have made no deposit with the clerk to apply on the printing of any part of the transcript.

The least number of printed copies of a record contemplated by the rules of this Court under any

circumstances is 10 printed copies (*Rule 35, paragraph 7*). This number is permitted only in submitting petition for certiorari, and if the petition is granted, the full 30 copies of the record "must be promptly supplied, by further printing if necessary."

Paragraph 4 of *Rule 38* requires the full 30 copies of the record to accompany a petition for certiorari to the Court of Claims.

Appellee is unable to proceed with this case, except to move dismissal or affirmance. This is a second appeal, and the rules of this Court recognize that appellee is entitled to prompt disposition. *Paragraph 5* of *Rule 18* provides:

> "Cases once adjudicated by this Court upon the merits, and again brought up, may be advanced by leave of the Court."

The rules of this Court do not countenance delay and inattention by appellants. If an appellant fails to docket a case after having an appeal allowed, appellee may have the case docketed and dismissed. (*Rule 10, Paragraph 1*). If an appellant does not pay to the clerk the estimated sum for printing the record within 70 days after the case is docketed, "it shall be the duty of the clerk to report that fact to the Court, whereupon the cause will be dismissed, unless good cause to the contrary is shown." (*Rule 11, Paragraph 2*). If an appellant fails to print a material part of the record, the appeal may be dismissed. (*Rule 11, Paragraph 9*).

A default by an appellant in preparing or filing brief is ground for dismissing the case. (*Rule 25, Paragraph 5*).

In *Steever vs. Rickman,* 109 U. S. 74, 75; 27 L. Ed. 861, Mr. Chief Justice Waite, speaking for the unanimous Court, stated:

> "If, through the fault of a plaintiff in error or appellant, printed copies of the record are not furnished to the justices or the parties when required in the due prosecution of the cause, the writ or appeal will be dismissed for want of prosecution, unless sufficient cause be shown to the contrary."

In *Portland Company vs. United States,* 15 Wall. 1; 21 L. Ed. 113, the unanimous opinion of the Court was announced by Mr. Chief Justice Chase, that appeal should be dismissed because of the disregard of the rules of Court by appellants' counsel in making up his brief. To the same point see *Benites vs. Hampton,* 123 U. S. 519; 31 L. Ed. 260.

Want of due prosecution of an appeal in accordance with the rules of this Court is ground for dismissal.

Winslow vs. Wilcox, 105 U. S. 447, 451; 26 L. Ed. 1065, 1066.

United States vs. Burchard, 125 U. S. 176, 178; 31 L. Ed. 662.

Rules of Court have the force of law.

Rio Grande Irrigation Company vs. Gildersleeve, 174 U. S. 603, 608; 43 L. Ed. 1103, 1105.

On October 7, 1924, this Court entered an order dismissing the case of *Louisville and Nashville Railroad Company vs. United States,* because of the failure of appellant to comply with the rule governing printing of the transcript

In *Weston vs. City of Tulsa,* on March 23, 1925, this Court declined to give consideration to a motion presented by an appellant who was in default under the rules of this Court.

It is noteworthy that the transcript filed by appellants does not present the evidence in simple and condensed form, as required by *Equity Rule 75.* The evidence in the record which was before this Court in 1913 was prepared when the first appeal was taken to the United States Circuit Court of Appeals in 1912. The clerk of the United States District Court for the Southern District of Florida certified to the record in April, 1912 *Equity Rule 75* was not then in force. Appellants' failure to comply with this rule, even though the printing of the transcript had been duly attended to, would in itself warrant dismissal of the appeal.

Newton vs. Consolidated Gas Company, 258 U. S. 165; 66 L. Ed. 538.

Houston vs. S. W. Bell Telephone Co., 259 U. S. 318; 66 L. Ed. 961.

Respectfully submitted,

J. C. COOPER,
HENRY C. CLARK,
Solicitors and Counsel for Appellee.